IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT APPEAL NO.1822 OF 2001

Rajarajeswari Nagar Residents
Association, Tirunelveli-627 007
rep. by its Secretary
Dharmaraja Jacob ... Appellant/Petitioner

Vs.

1. The District Collector
   Tirunelveli Kattabomman District
   Kokarikulam.

2. The Director of Town Planning
   Madras - 3.

3. The Commissioner
   Palayamkottai Municipality
   Palayamkottai
   Tirunelveli.

4. Jestine Thambu ... Respondents/Respondents

Writ Appeal filed against the order made in W.P.No.6217 of 1993, filed under Article 226 of the constitution of India praying to issue a writ of certiorarified Mandamus calling for the records in D.T.C.P.No.1081/92 in respect of S.NO.820 Kulavanigapuram Village, Palayamkottai Taluk on the fule of 2nd respondent and quash the same and forhearing the respondent from is any way violating the detailed development plain framed accordance with the town and country plainning Act 1971.

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For Appellant : Mr. K. Srinivasan
For R1 & R2 : Mr. I. Subramanian, G.A.
For R4 : Mr. A.R.Nixon

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JUDGMENT

(Judgment of the Court was delivered by
Chitra Venkataraman, J.

This writ appeal is filed against the order of the learned single Judge rejecting the writ petition on the ground that the dispute is of civil nature and the petitioner cannot move this Court by way of a writ petition but has to seek for necessary relief by way of civil suit. Aggrieved by the said order, the writ appeal has been filed seeking the relief to quash the order of the learned single Judge rejecting the prayer of quashing the proceedings of the second respondent and forbearing the respondents from in any way violating the detailed development plan framed in accordance with the Town and Country Planning Act, 1971.

2. A perusal of the affidavit filed in support of the writ petition clearly shows that the appellant has not disputed the fact that the fourth respondent is not the owner of the property. In paragraph-4 of the affidavit filed in support of the writ petition, it is stated that the mother of the fourth respondent had purchased 22 cents and odd from one Thirupathi and the Kalyana Mandapam is constructed only by her. In the counter filed by the fourth respondent, it is also stated that he is not the owner of the property and in respect of the very same property, one of the residents in that area had also filed a suit in O.S.No.204/1993 on the file of the District Munsif Court, Tirunelveli for an injunction to restrain the fourth respondent from putting up of any construction on the property, which is that of his mother. On the strength of the stand of fourth respondent, he submitted that though he had nothing to do with the property, he had been impleaded. It is stated that the injunction sought for against him had also been rejected. It is alleged that the writ petition filed against the said respondent with the prayer itself is not maintainable.

3. On a perusal of the averments in the affidavit and in the counter, it is seen that admittedly the fourth respondent is not a party against whom relief could be granted. Even otherwise considering the nature of the litigation projected, which involves appreciation of evidence and the fact that already a suit is pending in O.S.No.204 of 1993 on the file of the District Munsif Court, Tirunelveli filed at the instance of one Paulsuyambuganiammal against the respondent, we do not filed any error in the order of the learned single Judge dismissing the writ petition and directing the petitioner to seek remedy before the civil Court.

4. Learned counsel for the appellant placed reliance on a decision of this Court in AMMANI VS. THE TIRUCHENGODE MUNICIPALITY reported in 2004-2 L.W. 112. The decision of this Court relied on by the learned counsel for the appellant has no relevance to the facts alleged herein in the writ proceedings. Being pure questions of fact, which are to

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be established only through evidence to be let in and in view of the pendency of the suit before the District Munsif Court, Tirunelveli and also that the fourth respondent is not the owner of the property, the relief sought for cannot be granted. Hence, the writ appeal is dismissed. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

kb

To

1. The District Collector
   Tirunelveli Kattabomman District
   Kokarikulam.

2. The Director of Town Planning
   Madras - 3.

3. The Commissioner
   Palayamkottai Municipality
   Palayamkottai
   Tirunelveli.

+ 1 cc to Mr.A.R.Nixon Advocate SR.NO.55961
+ 1 cc to Mr.J.Antony Jesus Advocate SR.NO.56174
+ 1 cc to Govt.pleader SR.NO.55945

GG (CO)
RD 21.9.07

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